

06/28/00

JC813 U.S. PTO

UTILITY PATENT APPLICATION TRANSMITTAL
(Small Entity)

(Only for new nonprovisional applications under 37 CFR 1.53(b))

Docket No.
30687-US

Total Pages in this Submission

TO THE ASSISTANT COMMISSIONER FOR PATENTS**Box Patent Application**
Washington, D.C. 20231

Transmitted herewith for filing under 35 U.S.C. 111(a) and 37 C.F.R. 1.53(b) is a new utility patent application for an invention entitled:

PAINT SET CONFECTIONERY**005179**

and invented by:

PATENT TRADEMARK OFFICE

BRAD BAKERJC836 U.S. PTO
09/607313

06/28/00

If a **CONTINUATION APPLICATION**, check appropriate box and supply the requisite information:☒ **Continuation** ☐ **Divisional** ☐ **Continuation-in-part (CIP)** of prior application No.: PCT/US99/28550

Which is a:

☒ **Continuation** ☐ **Divisional** ☐ **Continuation-in-part (CIP)** of prior application No.: 60/110,675

Which is a:

☐ **Continuation** ☐ **Divisional** ☐ **Continuation-in-part (CIP)** of prior application No.: _____

Enclosed are:

Application Elements

1. ☒ Filing fee as calculated and transmitted as described below
2. ☒ Specification having 23 pages and including the following:
 - a. ☒ Descriptive Title of the Invention
 - b. ☒ Cross References to Related Applications (if applicable)
 - c. ☐ Statement Regarding Federally-sponsored Research/Development (if applicable)
 - d. ☐ Reference to Microfiche Appendix (if applicable)
 - e. ☒ Background of the Invention
 - f. ☒ Brief Summary of the Invention
 - g. ☒ Brief Description of the Drawings (if drawings filed)
 - h. ☒ Detailed Description
 - i. ☒ Claim(s) as Classified Below
 - j. ☒ Abstract of the Disclosure

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Application Elements (Continued)

3. ☒ Drawing(s) *(when necessary as prescribed by 35 USC 113)*
a. ☒ Formal b. ☐ Informal Number of Sheets 10
4. ☒ Oath or Declaration
a. ☒ Newly executed *(original or copy)* ☐ Unexecuted
b. ☐ Copy from a prior application (37 CFR 1.63(d)) *(for continuation/divisional application only)*
c. ☒ With Power of Attorney ☐ Without Power of Attorney
d. ☐ DELETION OF INVENTOR(S)
Signed statement attached deleting inventor(s) named in the prior application,
see 37 C.F.R. 1.63(d)(2) and 1.33(b).
5. ☐ Incorporation By Reference *(usable if Box 4b is checked)*
The entire disclosure of the prior application, from which a copy of the oath or declaration is supplied under
Box 4b, is considered as being part of the disclosure of the accompanying application and is hereby
incorporated by reference therein.
6. ☐ Computer Program in Microfiche
7. ☐ Genetic Sequence Submission *(if applicable, all must be included)*
a. ☐ Paper Copy
b. ☐ Computer Readable Copy
c. ☐ Statement Verifying Identical Paper and Computer Readable Copy

Accompanying Application Parts

8. ☐ Assignment Papers *(cover sheet & documents)*
9. ☐ 37 CFR 3.73(b) Statement *(when there is an assignee)*
10. ☐ English Translation Document *(if applicable)*
11. ☒ Information Disclosure Statement/PTO-1449 ☒ Copies of IDS Citations
12. ☐ Preliminary Amendment
13. ☒ Acknowledgment postcard
14. ☒ Certificate of Mailing
☐ First Class ☒ Express Mail *(Specify Label No.):* EL510121090US

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(Small Entity)

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Accompanying Application Parts (Continued)

15. ☐ Certified Copy of Priority Document(s) (if foreign priority is claimed)
16. ☒ Small Entity Statement(s) - Specify Number of Statements Submitted: 1
17. ☒ Additional Enclosures (please identify below):

Associate Power of Attorney
Petition to Make Special Because of Actual Infringement

Fee Calculation and Transmittal

CLAIMS AS FILED

For	#Filed	#Allowed	#Extra	Rate	Fee
Total Claims	26	- 20 =	6	x \$9.00	\$54.00
Indep. Claims	2	- 3 =	0	x \$39.00	\$0.00
Multiple Dependent Claims (check if applicable) <input type="checkbox"/>					\$0.00
BASIC FEE					\$345.00
OTHER FEE (specify purpose)					\$0.00
TOTAL FILING FEE					\$399.00

- ☒ A check in the amount of \$399.00 to cover the filing fee is enclosed.
- ☒ The Commissioner is hereby authorized to charge and credit Deposit Account No. 13-4213 as described below. A duplicate copy of this sheet is enclosed.
- ☐ Charge the amount of as filing fee.
- ☒ Credit any overpayment.
- ☒ Charge any additional filing fees required under 37 C.F.R. 1.16 and 1.17.
- ☐ Charge the issue fee set in 37 C.F.R. 1.18 at the mailing of the Notice of Allowance, pursuant to 37 C.F.R. 1.311(b).

Dated: 6/28/00


Signature

BRIAN J. PANGRLE, Reg. No. 42,973
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cc:

CERTIFICATE OF MAILING BY "EXPRESS MAIL" (37 CFR 1.010)Applicant(s): **BRAD BAKER**

Docket No.

30687-USSerial No.
To Be AssignedFiling Date
HerewithExaminer
To Be AssignedGroup Art Unit
To Be AssignedInvention: **PAINT SET CONFECTIONERY**I hereby certify that this **U.S. Continuation Application of PCT/US99/28550**

(Identify type of correspondence)

is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under
37 CFR 1.10 in an envelope addressed to: The Commissioner of Patents and Trademarks, Washington, D.C.

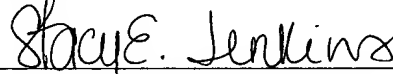
20231-0001 on

6/28/00

(Date)

Stacy E. Jenkins

(Typed or Printed Name of Person Mailing Correspondence)



(Signature of Person Mailing Correspondence)

EL510121090US

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Note: Each paper must have its own certificate of mailing.

5998870

Attorney Docket No. 30687-US

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

JC836 U.S. PTO
09/607313
06/28/00

In re application of: Brad Baker :
Serial No.: Unknown : Group No.: Unknown
Filed: Herewith : Examiner: Unknown
For: PAINT SET CONFECTIONERY :

Box Patent Application
Commissioner for Patents
Washington, D. C. 20231

**STATEMENT OF FACTS IN SUPPORT OF PETITION TO MAKE SPECIAL
BEACUSE OF ACTUAL INFRINGEMENT (M.P.E.P. § 708.02)**

I, Brad Baker, President, Impact Confections, Inc., located at 888 Garden of the Gods Road, Colorado Springs, Colorado 80907, am the inventor and President of the assignee corporation, thereby having an interest and relationship to the above identified invention.

I hereby state the following:

FACTS REGARDING INFRINGING DEVICE AND OFFERS FOR SALE

1. There is an actual infringement of this invention.

a. On June 6 - 8, 2000, I attended the ALL CANDY EXPO® trade show in Chicago, Illinois, as a representative of Impact Confections, Inc. While at the show, I saw an exhibit booth (No. 3615) belonging to a Hungarian company named Felföldi Potpourri Kft. also known as Felföldi Potpourri Ltd. ("Felföldi"). A photograph of the Felföldi booth appears as

Exhibit A attached to this statement. On display, and for sale, was a Felföldi product labeled "Paint&POP." A photograph of this product, as displayed, appears as Exhibit B attached to this statement. A representative from Impact Confections, Inc., Mr. Sebrone Denson, took these photographs. Mr. Denson also obtained a brochure for the Paint&POP product from a Felföldi representative. A copy of this brochure, labeled Exhibit C, is attached to this statement. The Felföldi Paint&POP product is also advertised on a Felföldi Web site (http://business.matav.hu/uzlet/potpouri/index_en.htm). A copy of a five frame movie at this Web site appears as Exhibit D attached to this statement. On the basis of my observations and the attached Exhibits, I assert that the Felföldi Paint&POP confectionery product infringes several claims of the above-identified invention.

b. The Felföldi Paint&POP product as shown most clearly in Exhibits B, C and D consists of a paintbrush and a container. The paintbrush comprises a plastic handle in the shape of an ordinary paintbrush handle. Attached to the handle is a hard candy bristle-like portion. The container contains a powdered candy. The paintbrush and container are packaged together through use of a hollow tube positioned around the container having a substantially rectangular cross section that retains the paintbrush.

c. The Felföldi Paint&POP product also has an aperture in the upper part of the paintbrush handle; a paintbrush handle consisting of a handle and a ferrule to which the hard candy brush is attached; and a container with a bucket-like handle. The product's tube section that retains the paintbrush is also integral with a lid of the container.

d. At the trade show, the Felföldi representatives were distributing a sheet entitled on one side as "PRICE LIST and PACKING DETAILS for palletised goods" (attached hereto as Exhibit E) and on the other side as "PRICE LIST and PACKING DETAILS for container load" (attached hereto as Exhibit F). Exhibit E and F also show a copy of a business card of a Felföldi representative, Miss Irene Mogyorós. The two sheets include prices for Felföldi's Paint&POP product in U.S. dollars, customs code, weight and carton size. Felföldi representatives stated that goods were available for immediate delivery to the U.S.

2. The product that I allege infringes this invention was first discovered to exist in the United States on June 6, 2000. It was first discovered to exist in Germany in February 2000.

COMPARISON OF INFRINGING DEVICE TO CLAIMS

3. I have made a rigid comparison of the alleged infringing device referred to above with the claims of this application.

4. In my opinion, claims 1-3, 12, 13, and 19-21 on file in this application are unquestionably infringed.

5. I have caused to be made a search of the pertinent prior art. All such material has been provided to the Examiner in a respective Information Disclosure Statement.

6. I believe that all the claims in this application, as on file, are allowable.

Date: 6-20-2000



Signature